

## **405 KAR 30:130. Oil shale operation permits.**

RELATES TO: KRS 350.600

STATUTORY AUTHORITY: KRS 146.270, 151.125, 224.033, 350.028, 350.050, 350.600

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.600 requires the Department for Natural Resources to develop administrative regulations for oil shale operations to minimize and prevent their adverse effects on the citizens and the environment of the Commonwealth. This administrative regulation sets forth the requirements for obtaining an oil shale mining permit.

Section 1. Applicability. The provisions of this administrative regulation shall apply to permits for all oil shale operations except for oil shale exploration operations.

Section 2. Permit Required. No person shall engage in oil shale operations without first having obtained a permit from the cabinet.

Section 3. Term of Permits. (1) Each permit shall be issued for a fixed term not to exceed five (5) years. A longer fixed permit term may be granted at the discretion of the cabinet only if:

- (a) The application is full and complete for the specified longer term; and
- (b) The applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

(2) A permit shall terminate if the permittee has not begun the oil shale operation covered by the permit within three (3) years of the issuance of the permit. The permittee shall be deemed to have commenced oil shale operations at the time that the construction of the processing plant is initiated or at the time that mining of the shale begins, whichever is first.

(a) The cabinet may grant reasonable extensions of the time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

- 1. Litigation precludes the commencement or threatens substantial economic loss to the permittee; or
- 2. There are conditions beyond the control and without the fault or negligence of the permittee.

(b) Extensions of time granted by the cabinet under this subsection shall be specifically set forth in the permit and notice of the extension shall be made to the public.

Section 4. Preliminary Requirements. A person desiring a permit shall submit to the cabinet the necessary preliminary application as prescribed by the cabinet. The preliminary application shall contain pertinent information including, but not limited to, a U.S. geological survey seven and one-half (7 1/2) minute topographic map and a 1:6000 map marked to show the boundaries of the area of land to be affected, and the location of the oil shale deposits to be mined, access roads, haul roads, spoil disposal areas, and sedimentation ponds. Areas so delineated on the map shall be physically marked at the site in a manner prescribed by the cabinet. Personnel of the cabinet shall conduct, within thirty (30) days after filing, an on-site examination of the area with the person or his representatives after which the person may submit a permit application.

Section 5. Publication of Notice of Intention to Mine. (1) An applicant for a permit shall place an advertisement in the newspaper of largest bona fide circulation, according to the definition of KRS 424.110 to 424.120, in the county or counties wherein the proposed oil shale operation is to be located.

(2) The advertisement shall be published at least once each week for four (4) consecutive weeks, with the first advertisement being published not less than ten (10) nor more than thirty (30)

days prior to the filing of the permit application with the cabinet.

(3) The public notice of the intention to file an application shall be entitled "Notice of Intention to Conduct Oil Shale Mining" and shall be in a manner and form prescribed by the cabinet and shall include, but not be limited to, the following:

(a) The name and address of the applicant;

(b) The permit application number;

(c) A description which shall:

1. Clearly describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

2. Clearly describe the exact location and boundaries of the proposed permit area; and

3. State the name(s) of the U.S. geological survey seven and one-half (7 1/2) minute quadrangle map(s) which contains the area shown or described.

(d) A description of the kind of mining activity proposed, together with a statement of the amount of acreage affected by the proposed operation;

(e) The address of the cabinet to which interested persons may submit written comments on the application; and

(f) The location where a copy of the application is available for public inspection.

(4) The applicant for a permit required under this administrative regulation shall establish the date and place at which the "Notice of Intention to Conduct Oil Shale Mining" was published by attaching to his application an affidavit from the publishing newspaper certifying the time, place and content of the published notice.

(5) Public inspection of the application. The applicant shall make a full copy of the complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the cabinet at the courthouse of the county where the mining is proposed to occur.

(6) Any person with an interest which is or may be adversely affected shall have the right to file with the cabinet written comments on the application within thirty (30) days of the final notice of the application in the newspaper.

Section 6. Contents of the Permit Application. (1) A person desiring a permit shall submit the necessary application as prescribed by the cabinet. The application shall be on forms provided by the cabinet, and originals and copies of the application shall be prepared, assembled and submitted in the number, form and manner prescribed by the cabinet with such attachments, plans, maps, certifications, drawings, calculations or other such documentation or relevant information as the cabinet may require.

(2) The application shall include the following information:

(a) Each application shall contain the names and addresses of:

1. The permit applicant, including his or her telephone number;

2. Every owner of the surface of the area of land to be affected by the permit;

3. The owners of record of all surface areas contiguous to any part of the proposed permit area;

4. Every owner of the oil shale to be mined;

5. The holders of any leasehold interest in the property to be mined;

6. The contractor or other person, if different from the applicant, who will conduct surface mining activities on behalf of the applicant, including his telephone number; and

7. The resident agent of the applicant who will accept service of process, including his telephone number.

(b) Each application shall contain the following information:

1. A detailed description of the location and area of land to be affected by the operation, specifying the permit boundaries;
2. A description of access to the site from the nearest public highway;
3. The source of the applicant's legal right to mine oil shale on the land affected by the permit;
4. A copy of the applicant's published notice of intention to mine and an affidavit from the publisher, pursuant to Section 5 of this administrative regulation;
5. The name of the proposed mine and the Mine Safety and Health Administration identification number for the mine and all sections, if applicable;
6. Proof, such as a power of attorney or a resolution of the board of directors, that the individual signing the application has the authority to represent the applicant in the permit matter;
7. Whether or not the applicant, any subsidiary, or affiliate; or any officer, partner, or director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, holds or has held any other federal or state oil shale or any surface coal mining permit issued by the cabinet and the identification of such permits.

(c) Each application shall contain the following compliance information:

1. A statement of whether the applicant, any subsidiary, or affiliate; or any officer, partner, director, or any individual owning, of record or beneficially, ten (10) percent or more of any class of stock of the applicant, has:
  - a. Had an oil shale or surface coal mining permit of the United States or any state suspended or revoked; or,
  - b. Forfeited an oil shale or surface coal mining performance bond or similar security deposited in lieu of bond.
2. If any such suspension, revocation, or forfeiture has occurred, the application shall contain a statement of the facts involved, including:
  - a. Identification number and date of issuance of the permit, and date and amount of bond or similar security;
  - b. Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for that action;
  - c. The current status of the permit, bond, or similar security involved;
  - d. The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and
  - e. The current status and results of these proceedings.
3. Each application shall contain a list of each violation notice pertaining to federal oil shale mining laws and the regulations promulgated pursuant thereto, and oil shale mining laws and applicable administrative regulations of any state, received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. Each application shall also contain a list of each violation notice pertaining to air or water environmental protection received by the applicant in connection with any oil shale mining operation during the three (3) year period before the application date. The application shall contain a statement of the facts involved, including:
  - a. The date of issuance and identity of the issuing regulatory authority, cabinet, or agency;
  - b. A brief description of the particular violation alleged in the notice;
  - c. The date, location, and type of any administrative or judicial proceedings initiated concerning the violation; and
  - d. The current status and results of these proceedings.

(3) Maps. The application shall include one (1) copy of a United States Geological Survey seven and one-half (7 1/2) minute topographic map or other such map acceptable to the cabinet on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow,

the name of the applicant and date, and the name of the person who located the operation on the map.

(4) Enlarged maps. The application shall include one (1) copy of an enlarged United States Geological Survey seven and one-half (7 1/2) minute topographic map or other such map enlarged to a scale of 1:6000 or larger acceptable to the cabinet and meeting the requirements of paragraphs (a) through (h) of this subsection. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS Chapter 322. The certification shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the oil shale mining laws of this state." The certification shall be signed and notarized. The cabinet may reject any map as incomplete if its accuracy is not so attested;

(b) Show adjacent surface, underground, and in situ mining operations and the boundaries of surface properties and names of owners of the affected area and owners of properties contiguous to any part of the affected area;

(c) Be of a scale between 400 feet to the inch and 600 feet to the inch;

(d) Show the names and locations of all streams, lakes, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, public parks, public property, and utility lines on the area of land affected within 1,000 feet of such area;

(e) Show by appropriate markings the boundaries of the area of land to be affected, the deposit of oil shale to be mined, and the total number of acres involved in the area of land to be affected;

(f) Show the date on which the map was prepared, the north point and the quadrangle name; and

(g) Show the drainage plan on and away from the area of land to be affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

(5) Prime farmland. If the area to be mined has been designated as prime farmland, the application shall include a plan for the mining and restoration of prime farmland consistent with the requirements of 405 KAR 30:280.

(6) Postmining land use plan. The application shall include a plan for postmining land use which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:220 regarding postmining land use.

(7) Use of explosives plan. The application shall include a plan for use of explosives which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:250 with regard to use of explosives.

(8) Topsoil handling and restoration plan. The application shall include a plan for the handling and restoration of topsoil which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:290 with regard to topsoil handling.

(9) Backfilling and grading plan. The application shall include a plan for backfilling and grading which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:390 with regard to backfilling and grading.

(10) Revegetation plan. The application shall include a plan for the revegetation of all disturbed areas which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:400 with regard to revegetation.

(11) Spoil and spent shale disposal plan. The application shall include a plan for the disposal of spoil and spent shale in excess of that required to meet the backfilling and grading requirements of 405 KAR 30:390 which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:370 with regard to disposal of spoil and spent shale.

(12) Plan for handling of waste materials and acid-forming and toxic-forming materials. The application shall include a plan for the handling of acid-forming and toxic-forming materials, waste materials or other unstable materials which shall demonstrate to the satisfaction of the cabinet that the operation will comply with the requirements of 405 KAR 30:360, Waste management provisions.

(13) Surface water control and monitoring plan. The application shall contain a plan for the control and monitoring of surface water, which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of:

- (a) 405 KAR 30:300 with regard to protection of the hydrologic system;
- (b) 405 KAR 30:320 with regard to water quality standards and surface water monitoring;
- (c) 405 KAR 30:330 with regard to sediment control measures; and
- (d) 405 KAR 30:310 with regard to diversions of surface flows and water withdrawal.

(14) Groundwater control and monitoring plan. The application shall include a plan for the control and monitoring of groundwater, which shall demonstrate to the satisfaction of the cabinet that the operation will comply with the requirements of:

- (a) 405 KAR 30:300 with regard to protection of the hydrologic system;
- (b) 405 KAR 30:320 with regard to groundwater; and
- (c) 405 KAR 30:310 with regard to diversion of underground flows.

(15) Air resources protection plan. The application shall include an air resources protection plan which shall demonstrate to the satisfaction of the cabinet that the proposed operation will comply with the requirements of 405 KAR 30:230 with regard to air resources protection.

(16) Fish and wildlife plan. The application shall include a fish and wildlife plan which shall demonstrate to the satisfaction of the cabinet that the operation will comply with the requirements of 405 KAR 30:240 with regard to fish and wildlife.

(17) In the required operational plans specified in subsections (5) through (16) of this section and in the other requirements of this section, the cabinet may require all such supporting documentation as the cabinet may deem necessary to ensure that the provisions of this chapter will be met. Such documentation may include but not be limited to detailed engineering drawings, engineering calculations, and monitoring and documentation prepared by qualified persons in other appropriate technical fields or sciences.

(18) Each application submitted to the Department for Natural Resources for an oil shale operation permit shall be accompanied by a fee determined by the cabinet. The amount of such fee shall be \$500, plus fifty (50) dollars for each acre or fraction thereof of the area of land to be affected under the permit; provided however, such fee shall not exceed the actual or anticipated cost of reviewing the permit. The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No application shall be processed unless such fee has been paid. The payment of such fee shall only cover the permit required by the Department for Natural Resources and shall not relieve the applicant from the obligation to pay additional fees for any other permits required from the cabinet.

Section 7. Procedures for Processing of Application. (1) Five (5) separate copies of the complete application shall be submitted to the cabinet at the location and address prescribed by the cabinet. The cabinet will provide written acknowledgment of receipt of the application.

(2) Within twenty-one (21) days of receipt of an application for a permit to conduct oil shale operations, the cabinet shall provide written notification to the applicant as to the completeness of the application. A determination by the cabinet that the application is complete shall not be construed to mean that the application is technically sufficient.

(3) The cabinet shall act upon a complete application within 120 days after the filing of the complete application.

(4) The cabinet shall approve a complete application filed in accordance with this administrative regulation, if it finds, in writing, that the applicant has demonstrated that the oil shale operation described in the application:

- (a) Will be conducted in accordance with applicable statutes and administrative regulations;
- (b) Will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and
- (c) Will not adversely affect any cultural resources or districts, sites, buildings, structures, or objects listed on the National Register of Historic Places, unless the proposed exploration has been approved by both the cabinet and the agency with management responsibility over such areas.

Section 8. Notice and Hearing. (1) The cabinet shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(2) Any person with an interest which is or may be adversely affected by a decision of the cabinet pursuant to paragraph (1) of this section, shall have the opportunity for administrative and judicial review.

Section 9. Compliance. (1) Permit conditions. Permits issued by the cabinet may contain certain conditions necessary to ensure that the oil shale operation will be conducted in compliance with all applicable statutes and administrative regulations.

(2) All oil shale operations shall be conducted in accordance with all applicable statutes and administrative regulations and any conditions imposed by the cabinet on the permit.

Section 10. Cabinet Review of Outstanding Permits. (1) The cabinet shall review each permit issued and outstanding under this chapter during the term of the permit. This review shall occur not later than the middle of the permit term.

(2) After this review, the cabinet may, by order, require revision or modification of the permit provisions or may increase the amount of the bond to ensure compliance with all applicable statutes and administrative regulations.

(3) Copies of the decision of the cabinet shall be sent to the permittee.

(4) Any order of the cabinet which requires revision or modification of the permit or increases the amount of the bond shall be based upon written findings and shall be subject to the provisions for administrative and judicial review.

Section 11. Permit Revisions. (1) A revision to a permit shall be obtained:

(a) For changes in the oil shale operation described in the original application and approved under the original permit;

(b) When required by an order issued under Section 10 of this administrative regulation; or

(c) When there is an increase of the area under the permit.

(2) The application for a revision shall be filed with the cabinet sixty (60) days prior to the date on which the permittee expects to revise the oil shale operation. The term of a permit shall remain unchanged by a revision.

(3) Application for changes in the method of operation or when required by an order issued under Section 10 of this administrative regulation:

(a) An application for a revision under subsections (1)(a) or (b) of this section shall meet the following requirements:

1. The application for revision shall be submitted in the form prescribed by the cabinet.

2. The permittee shall submit, in the manner prescribed by the cabinet, all revised or updated information required by the cabinet. Such information shall include, but not be limited to, an updated operational plan current to the date of the request for the revision, showing the status and extent of all oil shale operations on the existing permit.

3. The permittee shall provide evidence of any additional bond which the cabinet might require.

4. The permittee shall provide public notice as required under Section 5 of this administrative regulation.

(b) The revision shall be granted provided that:

1. The permittee is in compliance with the terms and conditions of the existing permit.

2. The present oil shale mining and reclamation operation is in compliance with all applicable statutes and administrative regulations.

(c) The permit for the revision may contain conditions necessary to ensure compliance with all applicable statutes and administrative regulations.

(4) Application for a revision to increase the area under permit. Upon application by the operator, the cabinet may amend a valid existing permit so as to increase the permitted area of land to be affected by operations under that permit. Such applications for amendment may be filed at any time during the term of the permit.

(a) Application. The permittee shall file an application in the same form and with the same content as required for an original application under this administrative regulation.

(b) Fees. The application submitted to the Department for Natural Resources for a revision to an oil shale operation permit shall be accompanied by a fee determined by the cabinet. The amount of such fee shall be \$500, plus fifty (50) dollars for each acre or fraction thereof of the increased area; provided however, such fee shall not exceed the actual or anticipated cost of reviewing the permit. The fee shall accompany the application in the form of a cashier's check or money order payable to the Kentucky State Treasurer. No application for a revision will be processed unless such fee has been paid. The payment of such fee shall only cover the permit required by the Department for Natural Resources and shall not relieve the applicant from the obligation to pay additional fees for any other permits required from the cabinet.

(c) The operator shall file with the cabinet a supplemental bond in an amount to be determined as provided under 405 KAR 30:040 for each acre or fraction of an acre of the increased area.

(5) Notice and hearing.

(a) The cabinet shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the cabinet pursuant to paragraph (1) of this section shall have the opportunity for administrative and judicial review.

**Section 12. Permit Renewals.** (1) Any valid permit issued pursuant to KRS 350.600 and the administrative regulations promulgated pursuant thereto shall carry with it the right of successive renewal upon expiration of the term of the permit. Successive renewal shall be available only for those areas specifically within the boundaries of the existing permit.

(2) Any permit renewal shall be for a term not to exceed the period of the original permit.

(3) An application for renewal of a permit shall be filed with the cabinet at least sixty (60) days before the expiration date of the permit.

(4) If an application for renewal of a valid existing permit includes a proposal to extend the operation beyond the boundaries authorized in the existing permit, the portion of the application which addresses any new land areas shall be subject to the full standards applicable to a new application pursuant to KRS 350.600 and the administrative regulations promulgated pursuant there-

to, and a new and original application shall be required for such areas.

(5) The permit renewal shall be issued provided that the requirements of paragraphs (a) through (f) of this subsection are met.

(a) The application for renewal shall be submitted in the form prescribed by the cabinet.

(b) The operator shall submit all revised or updated information required by the cabinet. Such information shall include, but not be limited to, an updated operational plan current to the date of request for renewal, showing the status and extent of all oil shale operations on the existing permit.

(c) The permittee is in compliance with the terms and conditions of the existing permit.

(d) The present oil shale operation is in compliance with all applicable statutes and administrative regulations.

(e) The permittee shall provide evidence of any additional bond which the cabinet might require.

(f) The permittee shall provide public notice as provided for under Section 5 of this administrative regulation.

(6) Notice and hearing.

(a) The cabinet shall notify the applicant and any person who requests such notification, in writing, of its decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval.

(b) Any person with an interest which is or may be adversely affected by a decision of the cabinet pursuant to this section shall have the opportunity for administrative and judicial review.

Section 13. Criteria for Permit Approval and Denial. No application for a permit and no oil shale operation shall be approved or allowed, unless the application affirmatively demonstrates and the cabinet determines on the basis of information set forth in the application, and other available information as necessary, that:

(1) The permit application is accurate, complete and that all requirements of KRS Chapters 151, 224, and 350 and the administrative regulations promulgated pursuant thereto have been complied with.

(2) The oil shale operations proposed can be carried out under the method of operation contained in the application in a manner that will satisfy all requirements of KRS Chapters 151, 224, and 350, and the administrative regulations promulgated pursuant thereto.

(3) The oil shale operations proposed have been designed to minimize adverse effects to the hydrologic balance.

(4) The proposed operation will not constitute a hazard to, or do physical damage to life, to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, other public property or to members of the public, their real and personal property. All necessary measures shall be included in the method of operation in order to eliminate such hazard or damage. If it is not technologically feasible to eliminate such hazard or damage by adopting specifications in the method of operation, then that part of the operation which constitutes the cause of the hazard or damage shall be deleted from the application.

(5) The proposed operation will not adversely affect:

(a) A wild river established pursuant to KRS Chapter 146;

(b) The continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533), or result in the destruction or adverse modifications of the habitat of such a species;

(c) Fragile or historic lands in which the oil shale operations could result in significant damage to important historic, cultural, scientific, aesthetic values and natural systems;

(d) Renewable resource lands in which the oil shale operations could result in substantial loss



or reduction of the long-range availability of water supplies;

(e) Renewable resource lands in which the oil shale operations could result in substantial loss or reduction of the long-range productivity of food and fiber products; and

(f) Natural hazard lands in which oil shale operations could substantially endanger life and property.

(6) The applicant has with respect to prime farmland obtained either a negative determination or satisfied the requirements of Section 6(5) of this administrative regulation and 405 KAR 30:280.

(7) The proposed operation will not be inconsistent with other oil shale operations anticipated to be performed in areas adjacent to the proposed permit area.

(8) The proposed permit area is:

(a) Not included within the boundaries of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act, and the National Recreation Areas designated by Act of Congress;

(b) Not included within 300 feet, measured horizontally, of any public park, public building, school, church, community or institutional building;

(c) Not included within 100 feet, measured horizontally, of a cemetery;

(d) Not within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way. The cabinet may permit such roads to be relocated or, in the area affected, to lie within 100 feet of such road, if the applicant has obtained necessary approval from the governmental authority with jurisdiction over the public road and if after public notice and opportunity for public hearing a written finding is made by the cabinet that the interest of the public and the landowner affected thereby will be protected. The public notice required shall be published in the counties of the affected area in the newspaper(s) of largest bona fide circulation according to the definition in KRS Chapter 424;

(e) Not within 300 feet, measured horizontally, of an occupied dwelling unless the applicant submits with the permit application a written waiver from the owner of the dwelling consenting to such an operation within a closer distance of the dwelling specified in the waiver. The waiver must be knowingly and intelligently given and be separate from a lease or deed unless the lease or deed contains an explicit waiver; and

(f) Not within 100 feet of an intermittent or perennial stream unless the cabinet specifically authorizes operations at a closer distance to, or through, the stream. Such authorization shall not be given unless the applicant demonstrates to the satisfaction of the cabinet that such authorization is environmentally sound and that all other applicable laws and administrative regulations have been complied with.

(9) If the cabinet is unable to determine whether the proposed oil shale operation is located within the distances or boundaries of any of the lands identified in subsections (5), (6), and (8) of this section, the cabinet shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the agency that it must respond in writing within thirty (30) days of receipt of the request. Upon failure of the agency to respond in writing within the thirty (30) day period, the cabinet shall presume that the proposed oil shale operation is not located within the boundaries of any such lands.

**Section 14. Denial of Permit for Past Violations.** (1) An operator or person whose permit has been revoked or suspended shall not be eligible to receive another permit or begin another operation, or be eligible to have suspended permits or operations reinstated until he shall have complied with all the requirements of KRS Chapter 350 with respect to all permits issued him.

(2) An operator or person who has forfeited any bond shall not be eligible to receive another

permit or begin another operation unless the land for which the bond was forfeited has been reclaimed without cost to the state, or the operator or person has paid such sum as the cabinet finds is adequate to reclaim such lands.

(3) If the applicant, operator, any subcontractor of the applicant, or any person acting on behalf of the applicant, has either conducted activities with a demonstrated pattern of willful violations of KRS Chapter 350 or has repeatedly been in noncompliance of KRS Chapter 350, then the application should be denied; provided nothing contained herein shall be construed as to relieve a permittee of responsibility with respect to any permit issued to him.

(4) If the cabinet determines that any activity regulated pursuant to KRS Chapter 350 which is owned or controlled by the applicant is currently in violation of any environmental law or administrative regulation of the Commonwealth, then the cabinet shall require the applicant, before the issuance of the permit, to either:

(a) Submit proof which is satisfactory to the cabinet that the violation:

1. Has been corrected, or
2. Is in the process of being corrected in good faith; or

(b) Establish to the satisfaction of the cabinet that the applicant has filed and is presently pursuing a good faith administrative or judicial appeal to contest the validity of the violation.

(5) If the applicant submits the proof specified in either subsection (4)(a)2 or (b) of this section, then the cabinet may issue the permit with an appropriate condition that either the reclamation work be continued in good faith until completion or that, if the applicant loses his action contesting the violation, such violation be corrected within a specified time. Failure to comply with any conditions shall be grounds for revocation of the permit.

(6) If the applicant disagrees with the cabinet's determination under this section then the applicant has the right to request an administrative hearing pursuant to KRS 224.081(2). (8 Ky.R. 100; Am. 472; eff. 8-2-81; 9 Ky.R. 951; eff. 10-5-83; TAm eff. 8-9-2007.)